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UNIVERSITY OF MICHIGAN
LAW SCHOOL

The Thomas M. Cooley Lectures



Second Series

Our Legal System and How It Operates

BURKE SHARTEL

Professor of Law, the University of Michigan

4:15 P.M.

FEBRUARY 23, 24, 25, 26 AND 27, 1948

HUTCHINS HALL, ROOM 120 • ANN ARBOR, MICHIGAN

THE THOMAS M. COOLEY LECTURES

THOMAS M. COOLEY was one of the three members of the first faculty of the University of Michigan Law School, when it was organized in 1859. In 1864 he became a justice of the Supreme Court of Michigan, and held that office until 1885, continuing also as a member of the Law Faculty. In 1871 he became Dean of the Law School. In addition to his duties on the bench and in the class room, he made many important contributions to legal literature. His treatises on "Constitutional Limitations" and on "Torts" were among the legal classics of his day and were known and read throughout the United States. At the time of his death in 1898, it may fairly be said that he was the most distinguished legal scholar that the State of Michigan had produced.

For the purpose of stimulating research and presenting its results in the form of public lectures, the faculty of the University of Michigan Law School established the Thomas M. Cooley Lectureship in honor of its first great legal scholar. This was made possible through the William W. Cook Endowment for Legal Research. The first Thomas M. Cooley lecturer was Professor Henry Rottschaefer, of the University of Minnesota. His subject was "The Constitution and Socio-Economic Change."

OUR LEGAL SYSTEM AND HOW IT OPERATES

PROFESSOR BURKE SHARTEL

Outline of Lectures

I. LEGAL STANDARDS FOR INDIVIDUAL AND OFFICIAL ACTS

Operation of legal system—analysis in terms of acts and standards

The state and legal standards

Standards for individual acts

Obligatory acts

Prohibited acts

Permitted acts

Effective acts

Standards for official acts

Chiefly standards for obligatory and effective acts

Standards for executive acts

Standards for judicial acts—notably rules of procedure and doctrine of precedent

II. OPERATION OF STANDARDS

Application of standards for individual

By individual to own acts

By judge and others to individual's acts

Application of standards for officials

By officials themselves

By judge in course of litigation

Enforcement of standards

Need for enforcement—limits

Enforcement of standards affecting individual

Enforcement of standards affecting officials

What is meant by saying a standard is "operative"?

Does this refer to legislative intention, recognition of obligation, or official effectuation?

Time and place of operation

III. CREATION OF STANDARDS

Law-making acts and standards therefor

Legislative law-making

Standards for legislator

Enforcement of standards for legislator

Legislative inertia

Subsidiary law-making

Delegation of power—terms and conditions

Judicial law-making

Standards for judge—rules of method

“Discovered law” doctrine

Sources of legal standards

IV. STRUCTURE AND STATEMENT OF STANDARDS

Legal control involves communication

Character of law-makers message

Law-maker determines form and content

Typical statement of legal standards

Incomplete statement

General statement

Duplicative statement

Statement in popular and technical terms

Statement of Statute Law

Codification and consolidation

Statement of Case-law

Codification and restatement

V. INTERPRETATION OF STANDARDS

Need for interpretation

Who interprets

Search for fictitious legislative intent

Resources of interpreter: language and setting

Creative role of interpreter—limited by resources and
by standards of interpretation

Setting—cultural, legal, historical

Typical problems:

Resolution of ambiguity

Filling in details

Restrictive interpretation